IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20/10/2003

Coram

The Honourable Mr. Justice P.K. MISRA

W.P. No.13782 of 2001

A. Thandavamurthy ... Petitioner

-Vs-

1. The Government of Tamil Nadu,
rep. by its Secretary,
Education Department,
Chennai - 9.

2. The Joint Director of School Education
(Higher Secondary),
College Road,
Chennai - 6.

3. The District Educational Officer,
Chennai(North),
Egmore,
Chennai - 8.

4. The Correspondent,
Singarampillai Higher Secondary School,
Villivakkam,
Chennai - 49.

5. K. Murugesan,
Post Graduate Assistant,
Singarampillai Higher Secondary School,
Villivakkam,
Chennai - 49. ... Respondents

Petition under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus as stated therein.

!For Petitioner : Mr. K. Selvaraj

For Respondents 1 to 3: Ms. Thenmozhi Sivaperumal
Addl. Govt. Pleader

For Respondent-4 : Mr. G. Kathirvelu

For Respondent-5 : Mr. D. Hariparanthaman

:O R D E R

Heard the learned counsels appearing for the parties. The petitioner was appointed as B.T. Assistant on 10.06.1970. At that time, he had the qualification of B.Sc. B.Ed. and subsequently the school obtained recognition as Higher Secondary School on 5.8.1978. The petitioner was upgraded and inducted as P.G. Assistant on 29.10.1985 in Mathematics in the Higher Secondary School. In course of time, he obtained Post Graduate Certificate conducted by the State Council of Education Research, Chennai and in December, 1989, the petitioner obtained M.Sc. Degree in Mathematics from Osmania University.

2. Subsequently, the post of Headmaster fell vacant in the school and interview was held by the School on 9.10.99. The School Committee selected the petitioner on the basis of merit and appointed him in the post of Headmaster. Necessary arrangement was made for approval. At that stage, an appeal was filed by the present fifth respondent. It was pointed out at that stage that the post graduate degree (M.Sc.) in Mathematics obtained by the petitioner f rom Osmania University was yet to be recognised and therefore, the petitioner was not eligible for the post of Headmaster. It was further pointed out that the fifth respondent was the senior most and he was senior to the petitioner and his case should not have been ignored.

3. In the meantime, by letter dt.3.10.2000, the University of Madras intimated that the degree obtained by the petitioner was equivalent to any degree obtained in Madras University as, such degree from Osmania University was in the approved list prepared by the University Grant Commission. Subsequently, a representation was made by the School Committee to reconsider the matter in view of the subsequent development. At that stage, the first respondent directed the fourth respondent to approach the District Educational Officer. The District Educational Officer had sought clarification from the Director of School Education, who indicated that the application of the fourth respondent should be considered.

4. However, again on 16.7.2001, the District Educational Officer has passed an order indicating that the Certificate issued by the Osmania University was recognised in 2000, whereas vacancy had arisen in 19 99 and hence the present petitioner was not qualified in 1999. It was also held that he was not the senior most and such appointment cannot be approved. This order has been challenged in the present writ petition.

5. At the time of entertaining the writ petition, an order of stay was passed, which has been made final. It is not disputed that in the meantime, the petitioner, who continued all along as Headmaster, has retired and a fresh selection has been held.

6. In the above background, learned counsel for the petitioner has

relied upon the observations of this Court in the order dt.7.6.2002 in W.P. No.20074 of 2001, where, almost under similar circumstances, this Court had passed an order that the person, who had retired as Headmaster would be entitled to the salary.

7. Learned counsels for the respondents 1 to 3 and respondent No.5 have raised serious objections and contended that since the petitioner was not eligible, when the vacancy arose, the subsequent obtaining of degree would not entitle the petitioner for continuing in the post and the senior most teacher should be appointed in the post of Headmaster.

8. There is a basic flaw in the reasons advanced by the learned counsels for such respondents. As per Rule 15(4)(d) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 (hereinafter referred as "the Rules"), appointment to the post of Headmaster of Higher Secondary School shall be made by the method specified in clause (ii) either from the category of Headmasters of High Schools or Teachers' Training Institutes or from the category of Post-Graduate Assistants in academic subjects or Post Graduate Assistants in languages provided they possess the prescribed qualifications.

9. In Annexure V of the Rules, the qualifications prescribed relate to appointment of teachers in the Higher Secondary School. For appointment of Post Graduate Assistants in academic subject, the required qualification is the Master degree or equivalent degree in the subject. The qualification required for the Headmaster is to the following effect:-

" A Master's Degree of a University in the State for teaching any of the languages under Parts I and II or subjects under Part III, Group "A" of the syllabus for Higher Secondary Courses or a Master's Degree of equivalent standard in any one of the subjects or languages specified in the said

syllabus or a certificate issued by the University of Madras for having undergone the Certificates Course in Science and Humanities for Graduate Teachers in High Schools during the year 1960 -1964."

10. As per Rule 15(4)(i) of the Rules, the promotion shall be made on the grounds of merit and ability, seniority being considered only when merit and ability are approximately equal. In the present case, the appropriate school committee had made the selection on the basis of merit. The post of Headmaster is not on the basis of seniority. A combined reading of Rule 15(4)(i) and 15(4)(d) of the Rules also makes it clear that the promotion has to be made on the basis of merit. However, if the merit is found to be approximately equal, senior person may be preferred.

11. The school committee had considered the merit of various candidates and had recommended the name of the petitioner and pending approval of such recommendation, the petitioner was appointed as Headmaster. Appeals were filed by different candidates including the respondent No.5. The Joint Director by proceedings dated 10.4.2000 observed that M.Sc. degree obtained by the petitioner from Osmania University has to be evaluated by the concerned department and the procedure for deciding the merit and the ability was not

sufficient. It was also observed that only the senior most person is eligible to be appointed as Headmaster. Thereafter, a clarification was sought for from the Madras University regarding the certificate issued by the Osmania University by letter dated 23.5.2000. It is not disputed that thereafter the Madras University has informed that since the degree obtained from Osmania University has been recognised by UGC, such degree is to be recognised in Tamil Nadu. On the basis of such clarification, the school committee again passed a resolution that appointment should take effect from the date of evaluation and thereafter the Correspondent had made a representation dated 7.11.2000 to that effect. On the basis of such representation, the Secretary, Education Department intimated to the following effect :-

" . . . Since, the defects pointed out by the Joint Director in his proceedings is setright, on that basis you are required to submit the application to the concerned officer for the grant of approval to the appointment of Head Master in accordance with rules. . . ."

12. Thereafter the matter was brought to the notice of the Director of School Education and by proceedings dated 3.7.2001, the Director passed an order, relevant portion of which is as follows :-

 . . . It is informed that on the basis of the petition of the management the Government after careful consideration has passed an order. Therefore, against the order of the Government, the Director cannot issue further orders on the subject. Therefore, the District Education Officer is informed to consider the application of the management and pass orders.

13. In spite of the aforesaid observations made by the Secretary to the Government, Education Department and by the Director of School Education, the District Educational Officer again passed an order wherein he has observed :-

 . . . In the appeal filed against the order of appointed A. Thandavamoorthy, the Joint Director of School Education by proceeding dated 10-4-2000 it is informed that A. Thandavamoorthy is not qualified, was appointed as Head Master on 18-10-99 and since Murugesan is Senior in P.G. Post, he should be appointed as Head Master on consideration of the petition of the management 19-10-2000, the Joint Director vide proceeding dt: 30-11-2000 by upholding the order dt: 10-4-2000 directed the Correspondent to appoint K. Murugesan as Head Master immediately. It is informed to the Correspondent vide letter No. cited in the Ref.3, to appoint K. Murgesan as Head Master by executing the order of the Joint Director and sent papers for approval.

Since 7 months have passed pursuant to the order of Joint Director and the same was not implemented, it is highly regrettable.

Therefore it is asked to appoint Murugesan as Head Master immediately and sent papers for approval. further any correspondence regarding approval for the appointment of A. Thandavamoorthy as Head Master would not be entertained.

Further if the order of the Joint Director is not implemented within 7 days, it would be informed to the Director of School Education. It would be recommended to the Director of School Education to give the aid directly to the staff of the school. . . .

14. From the aforesaid, it is apparent that even though the Secretary of the Education Department had directed that the matter should be reconsidered and the defect regarding evaluation of the degree had been rectified, the District Educational Officer has directed that the respondent No.5 should be appointed as Headmaster immediately. The initial order passed by the Joint Director indicates that mainly because the petitioner was not considered to be eligible having regard to the educational qualification and 5th respondent was the senior most teacher, the latter should be appointed as the Headmaster. If there was any doubt regarding qualification, such doubt was amply clarified by the Madras University and thereafter the school committee had passed a resolution stating that the petitioner should be appointed as Headmaster with effect from the date when the Madras University has given the clarification. Promotion to the post of Headmaster is to be made on the basis of merit and ability and not on the basis of seniority. The Joint Director in its order dated 10.4.2000 apparently had not kept in view the provisions contained in Rule 15 and was swayed away of the fact that respondent No.5 was the senior most teacher. Whatever might have been the reservation initially, after the clarification was issued by the Madras University, which was reiterated by the Secretary to the Government, there need not have been any further misgiving regarding the qualification and the eligibility of the petitioner. It was within the jurisdiction of the school committee to select on merit. It is of course true that appeals had been filed. The appellate authority has not revaluated the relative merits, but has directed for appointment of the respondent No.5, mainly on the ground that he was senior.

15. Even assuming that the relative merits of the candidates have not been properly evaluated, the appellate authority could have remanded the matter to the School Committee for fresh selection or could have revaluated the merits of all the candidates, but merely because senior most person has not been selected, it could not have given a direction for appointment of the senior most teacher. In normal course, I would have remanded the matter to the school committee for a fresh selection on merits. However, it is now apparent that the petitioner who continued to function as Headmaster by virtue of stay has retired and for the consequential vacancy a fresh selection has taken place. Since the petitioner has already retired and he had worked as Headmaster by virtue of the stay order passed by this Court and the Government had no objection to the selection of the petitioner with effect from the date of clarification from the Madras University, I give a direction that the salary of the petitioner shall be paid as Headmaster with effect from the date of clarification letter issued by the Madras University.

16. Learned counsel appearing for the respondent No.5 has submitted that the petitioner was not eligible at the time when the initial selection had taken place, and therefore, even if he was allowed to continue as Headmaster, the direction of the Joint Director and the District Educational Officer to appoint respondent No.5 as Headmaster after the retirement of the petitioner should be given effect to. In my opinion, such a submission is misconceived. Even assuming that selection had not been done properly, the appellate authority should not have given a direction for appointment of the respondent No.5 merely on the basis of seniority. At the

cost of repetition it has to be indicated that as per Rule 15, seniority is not the basis for the selection, but merit-cum-ability is the basis. Therefore, in any event, a fresh selection was required to be made. Since a fresh selection has been made, the question of appointment of the Headmaster is to be considered now in accordance with law. However, it is made clear that if any person including the respondent No.5 is aggrieved by the fresh selection process, it would be open to such person to take appropriate steps in accordance with law including filing of appeal against the process of selection.

17. The direction issued by me to pay salary to the petitioner is on the peculiar facts and circumstances of the case because the petitioner has in fact been appointed as Headmaster and allowed to continue as such by virtue of the subsequent stay order passed by the High Court. As a matter of fact, almost under the similar circumstances, a similar order has been passed by a learned single Judge of this Court in W.P.No.20074 of 2001 dated 7.6.2002.

18. The writ petition is accordingly allowed to the extent indicated and subject to the observations made. No costs.

Index : Yes
Internet : Yes

ssa/dpk

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